



July 2, 2002

Ms. Deborah F. Harrison  
Assistant District Attorney  
Collin County  
210 South McDonald, Suite 324  
McKinney, Texas 75069

OR2002-3601

Dear Ms. Harrison:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165050.

The Collin County Criminal District Attorney's Office (the "district attorney") received a request for "any and all records or documents" relating to a fatal accident, including the accident report, photos of the accident scene and vehicles involved, and "all other material" in the district attorney's file. You indicate that the district attorney has released some of the requested information. The district attorney claims that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

First, we address your statement that some of the submitted documents relate to the proceedings of a grand jury. This office has concluded that a grand jury is not a governmental body that is subject to chapter 552 of Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Gov't Code § 552.003(1)(B) (definition of governmental body does not include the judiciary); Open Records Decision No. 513 at 3 (1988) (information held by grand jury, which is extension of judiciary for purposes of chapter 552, is not itself subject to chapter 552). When an individual or an entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *See* Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld

from disclosure only if a specific exception to disclosure is shown to be applicable. *Id.* Thus, if the district attorney has custody of any of the specific documents that you have listed as agent of the grand jury, then such a document is in the grand jury's constructive possession and therefore is not subject to disclosure under chapter 552 of the Government Code. *Id.* at 4.

Next, we note that the submitted information includes accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for the release of an accident report to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See* Act of May 25, 2001, 77<sup>th</sup> Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the three items of information specified by the statute. *Id.* In this instance, the requestor has provided the district attorney with two of the three required items of information. Therefore, the accident reports that we have marked must be released to the requestor under section 550.065(b) of the Transportation Code.

The submitted information also includes a document that is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). One of the submitted documents also is a matter of public court record. Therefore, this document must be released under section 552.022(a)(17) unless it contains information that is expressly confidential under other law. The district attorney claims that this information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. However, these sections are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. As such, sections 552.103, 552.108, and 552.111 are not other law that makes information confidential for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (governmental body may waive litigation exception), 470 at 7 (1987) (governmental body may waive section 552.111), 177 at 3 (1977) (governmental body may waive law enforcement

exception). Thus, the district attorney may not withhold the document that also is a matter of public court record under sections 552.103, 552.108, or 552.111.

The district attorney also contends that this document is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles information that depicts a particular individual as a criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993).

The district attorney asserts that, in its entirety, the requested information "takes on the character of a criminal history." We conclude, however, that the document that is subject to section 552.022(a)(17) does not constitute a compilation of criminal history information for purposes of *Reporters Committee*. Thus, that document, which we have marked, is not confidential under section 552.101 of the Government Code and must be released.

The district attorney claims that the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

The district attorney informs us that the submitted information consists of seven case files, all of which relate to the fatal accident. The district attorney explains that three of the files relate to pending criminal charges against three defendants; three files relate to additional or alternative charges against two of those same defendants that did not result in indictments; and the seventh file relates to all six cases and all three defendants. The district attorney asserts that the release of the information that relates to the pending charges would interfere with the ongoing investigation and prosecution of those cases. The district attorney also explains that the remaining case files contain the same or similar information as the files in the pending cases. The district attorney argues that the release of the remaining files would result in the disclosure of information in the pending prosecutions and thereby interfere with

those cases. Based on the district attorney's representations and our review of the information in question, we find that the release of the remaining information in the submitted case files would interfere with the detection, investigation, and prosecution of crime. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 636 at 2-3 (1995) (information relating to closed case may be withheld under section 552.108(a) if its release will interfere with law enforcement and crime prevention).

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the front-page information held to be public in *Houston Chronicle*. The district attorney must release basic information under section 552.108(c) with regard to each of the cases to which the submitted information pertains, including detailed descriptions of the offenses involved. This information must be released whether or not it literally appears on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The district attorney may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, information that is in the district attorney's custody as agent of the grand jury is not subject to disclosure under chapter 552 of the Government Code. The district attorney must release the accident reports to the requestor under section 550.065(b) of the Transportation Code. The document that also is a matter of public court record must be released under section 552.022(a)(17) of the Government Code. The district attorney may withhold the remaining information under section 552.108(a)(1), except for the basic information that the district attorney must release in accordance with section 552.108(c). As we are able to make these determinations, we need not address the district attorney's other arguments.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

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<sup>1</sup>We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

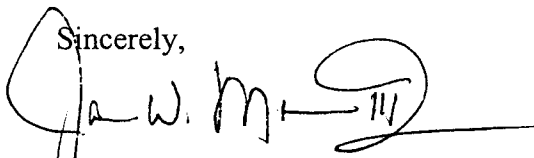
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 165050

Enc: Submitted documents

c: Mr. Mark J. Siegel  
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(w/o enclosures)